

**FOX ROTHSCHILD LLP**

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**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

MODAVOX, INC.

Plaintiff

Civil Action No. 07-CV-7088

v.

TACODA, INC.

FIRST AMENDED COMPLAINT

DEMAND FOR JURY TRIAL

Defendant.

FIRST AMENDED COMPLAINT AND DEMAND FOR TRIAL BY JURY

Plaintiff, Modavox, Inc., by its attorneys and for its Complaint, alleges as follows:

PARTIES

1. Plaintiff, Modavox, Inc. is a Delaware corporation, having its principle place of business at 4636 East University Drive, Suite 275, Phoenix, Arizona 80354. Plaintiff is the assignee of record of the full rights to and title in U.S. Patent No. 6,594,691 (hereinafter, "the '691 patent") and U.S. Patent No. 7,269,636 (hereinafter, "the '636 patent").

2. On information and belief, defendant Tacoda, Inc. (hereinafter, "Tacoda") is a Delaware corporation, having its principal place of business at 345 Seventh Avenue, 8th Floor, New York, New York 10001.

NATURE OF THE ACTION

3. This is an action for patent infringement arising under the patent laws of the United States of America, Title 35, United States Code, including 35 U.S.C. §§ 271 and 281.

4. Plaintiff charges Tacoda with infringement of the '691 patent. (Exhibit 1). Plaintiff further charges Tacoda with infringement of the '636 patent. (Exhibit 2). Plaintiff seeks a permanent injunction under 35 U.S.C. § 283 against continued infringement by Tacoda, its agents, servants, employees and assigns, and all those acting in concert with Tacoda.

JURISDICTION AND VENUE

5. Jurisdiction over the subject matter hereof is conferred upon this court by 28 U.S.C. §§ 1331 and 1338(a), as patent infringement claims arise under the patent laws of the United States.

6. Venue in this judicial district is proper under the provisions of 28 U.S.C. §§ 1391(b) and (c) and 1400(b), because both the '691 patent and the '636 patent were infringed in the State of New York, and because Tacoda has its principal place of business within this district.

FACTUAL BACKGROUND

7. Plaintiff is the sole owner of both the '691 and the '636 patents, which were duly and legally issued by the United States Trademark Office (hereinafter "USPTO"), and copies of which are included as Exhibits 1 and 2, respectively.

8. Upon information and belief, for a period of time, the length of which is unknown to Plaintiff prior to discovery, Tacoda has operated a business, for profit, that uses Plaintiff's technology claimed and described in both the '691 and '636 patents. Tacoda has neither sought nor received authorization to use Plaintiff's patented technology.

COUNT ONE

9. Plaintiff incorporates the allegations of Paragraphs 1-8 above as if fully set forth herein.

10. Tacoda makes, uses, sells, offers for sale and/or induces others to use in the United States, methods and related devices covered by one or more claims of the '691 patent.

11. Tacoda's actions thus constitute infringement of the '691 patent in violation of 35 U.S.C. § 271.

12. By reason of Tacoda's acts of infringement, Plaintiff has suffered and will continue to suffer monetary damages and irreparable harm.

COUNT TWO

13. Plaintiff incorporates the allegations of Paragraphs 1-12 above as if fully set forth herein.

14. Tacoda makes, uses, sells, offers for sale and/or induces others to use in the United States, methods and related devices covered by one or more claims of the '636 patent.

15. Tacoda's actions thus constitute infringement of the '636 patent in violation of 35 U.S.C. § 271.

16. By reason of Tacoda's acts of infringement, Plaintiff has suffered and will continue to suffer monetary damages and irreparable harm.

PRAYER FOR RELIEF

17. WHEREFORE, Plaintiff prays for a permanent injunction under 35 U.S.C. § 283 against continued infringement by Tacoda, its agents, servants, employees and assigns, and all those acting in concert with it; an accounting for compensatory damages, including interest and costs under 35 U.S.C. § 284; and such other and further relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff Modavox, Inc. hereby demands a jury trial on all issues.

DATED: September 11, 2007



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